

Claimant appeared by and through her attorney, John M. Ostrowski of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, James E. Benfer of Topeka Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Matthew S. Crowley of Topeka, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

This appeal involves a post-award application for medical treatment. Claimant underwent a surgical procedure that was not authorized by either the respondent or the Fund. Thereafter, the Fund was ordered to pay for that medical treatment. The Fund appeals from that award and seeks review of the findings and conclusions of the Special Administrative Law Judge as to whether claimant is entitled to payment of certain medical expenses as reasonable and necessary treatment of the injury she sustained by accident arising out of and in the course of her employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Special Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law as set forth in the Award by the Special Administrative Law Judge are found to be accurate and are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board agrees that claimant has sustained her burden of proof that the surgery was reasonably necessary to relieve claimant from the effects of her work-related injury.

The Appeals Board, further, adopts the analysis of the evidence by the Special Administrative Law Judge regarding the nature of the medical treatment. Specifically, the Appeals Board finds that claimant has proven by a preponderance of the credible evidence that the surgery was for curative as opposed to cosmetic purposes.

The Fund's reliance upon the Appeals Board's decision in Tackett v. Koch Chemical Company, Docket No. 163,962 (August 1996) is misplaced. Here claimant's surgery was not to correct any preexisting deformity of the breasts, but instead was intended to and did relieve claimant from the effects of her injury, specifically, back pain.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated April 10, 1997, should be, and the same is hereby, affirmed in all respects. The orders contained in the Award are hereby adopted by the Appeals Board as its own.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1998.

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BOARD MEMBER

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c: John M. Ostrowski, Topeka, KS  
James E. Benfer, Topeka, KS  
Matthew S. Crowley, Topeka, KS  
William F. Morrissey, Special Administrative Law Judge  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director